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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

OMAR RODRIGUEZ; CINDY
GUILLEN-GOMEZ; STEVE
KARAGIOSIAN; ELFEGO
RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

V.

BURBANK POLICE
DEPARTMENT; CITY OF
BURBANK,

Defendants.

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CASE NO.: BC 414 602

Assigned to: Hon. Joanne B. O'Donnell

JAMS Reference No. 1220040470  
Hon. Diane Wayne (Ret.),  
Discovery Referee

## 7<sup>th</sup> Report & Recommendation of the Discovery Referee

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## I. Procedural History

A hearing was held on March 11, 2011 at the Los Angeles branch of JAMS, located at 707 Wilshire Blvd., 46th Floor, Los Angeles, California, 90017. The Plaintiffs Omar Rodriguez, Cindy Guilen-Gomez and Steve Karagiosian (collectively, the "Plaintiffs") were represented by LAW OFFICES OF RHEUBAN & GRESEN and Solomon E. Gresen, Esq. The Defendants Burbank Police Department and the City of Burbank (collectively, "Defendants") were represented by BALLARD, ROSEN, GOLPER & SAVITT LLP and Linda Miller Savitt, Esq.

## II. Legal History

The Plaintiffs, three current police officers of the Burbank Police Department, filed a Complaint on May 28, 2009. The Complaint alleged that over a period of years the Plaintiffs were discriminated against, variously, based on their race, sex, pregnancy and/or ethnicity. The Complaint also alleged that the Plaintiff's were retaliated against for opposing such alleged discrimination and harassment. The Plaintiff's assert that they suffered adverse employment decisions including: imposition of discipline, demotion, failure to obtain promotions, and failure to obtain specific work assignments. The Defendants deny all allegations.

On October 2, 2009, in Department 37, the Honorable Judge Joanne B. O'Donnell, Judge of the Superior Court, appointed Diane Wayne, Judge (Ret.), as the Discovery Referee pursuant to *Civil Code of Procedure* §§ 639(a)(5), 640 and 645.1. All discovery disputes have been assigned to the Discovery Referee.

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1 **III. Recommendation:**

2 At the hearing, the following Motions were considered:

3 **1. The Defendants' Motion To Compel Further Responses To**  
4 **Special Interrogatories, Set 3: GRANT**

5 This Motion to Compel seeks further responses to two Special  
6 Interrogatories the Defendants propounded on the Plaintiffs: Special  
7 Interrogatories 10 and 11 (the "Interrogatories"). The Interrogatories relate to  
8 "RETURNED/DESTROYED DOCUMENTS<sup>1</sup>." Specifically, Special  
9 Interrogatory 10 asks: "IDENTIFY each SOURCE from which YOU or YOUR  
10 AGENT obtained originals or copies of any RETURNED/DESTROYED  
11 DOCUMENT." Further, Special Interrogatory 11 asks: "[i]f YOU or YOUR  
12 AGENT obtained originals or copies of any RETURNED/DESTROYED  
13 DOCUMENTs directly from a physical location where those documents were  
14 stored, without the involvement of any natural person as an intermediary, describe  
15 in full and complete detail how YOU or YOUR AGENT obtained physical custody  
16 of each such document."

17 In response, the Plaintiffs asserted that the Defendants must provide them  
18 with a list of all "RETURNED/DESTROYED DOCUMENTS." The Plaintiffs  
19 claimed that this list is necessary to refresh their recollection and that they could  
20 not provide an answer to the Interrogatories with it. They also objected to the  
21 Interrogatories on the grounds of: Attorney-Client Privilege and compound  
22 questioning.

23 "Unless otherwise limited by order of the court . . . any party may obtain  
24 discovery regarding any matter, not privileged, that is relevant to the subject matter  
25 involved in the pending action or to the determination of any motion made in that  
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27 <sup>1</sup> Documents that the Plaintiffs either destroyed or returned to Defendant City of Burbank as a  
28 result of: (1) Defendant's *Ex Parte* Application For Temporary Restraining Order And Order To  
Show Cause Re: Preliminary Injunction filed on August 6, 2009; (2) related and supplemental  
papers filed with the Court; (3) Judge Chalfant's Order dated August 27, 2009; and/or (4) Judge  
Chalfant's Order dated October 13, 2009.

1 action, if the matter either is itself admissible in evidence or appears reasonably  
2 calculated to lead to the discovery of admissible evidence.” Cal. Code Civ. P. §  
3 2017.010. “For discovery purposes, information should be regarded as ‘relevant to  
4 the subject matter’ if it might reasonably assist a party in evaluating the case,  
5 preparing for trial, or facilitating settlement thereof.” *Lipton v. Superior Court*, 48  
6 Cal. App. 4th 1599, 1611 (1996); *Gonzalez v. Superior Court*, 33 Cal. App. 4th  
7 1539, 1546 (1995). Furthermore, information that is reasonably calculated to lead  
8 to the discovery of admissible evidence does not require that it necessarily be  
9 admissible at trial; rather, the test is whether the information sought might  
10 reasonably lead to other evidence that would be admissible. *See Davies v.*  
11 *Superior Court*, 36 Cal. 3d. 291, 301 (1984); *Lipton*, 48 Cal. App. 4th at 1611-12.  
12 Importantly, “[e]ach answer in a response to interrogatories shall be as complete  
13 and straightforward as the information reasonably available to the responding party  
14 permits.” Cal. Code Civ. P. § 2030.220(a).

15 In the instant case, the Interrogatories seek information “that is relevant to  
16 the subject matter” and is both “itself admissible in evidence [and] appears  
17 reasonably calculated to lead to the discovery of admissible evidence.” Cal. Code  
18 Civ. P. § 2017.010. Further, the Interrogatories are not precluded by the  
19 limitations imposed by the Court or the Attorney-Client Privilege. Plaintiff argues  
20 that Judge O’Donnell’s October 2, 2009 Order<sup>2</sup> limiting certain discovery applies  
21 to these Interrogatories. However, the Interrogatories only ask about the original,  
22 third-party “SOURCE[s]” from which the Plaintiffs and/or their counsel obtained  
23 any of the “RETURNED/DESTROYED DOCUMENT[s].” Thus, because the  
24 Interrogatories are not asking about communications or transmissions between  
25 attorney and client, neither Judge O’Donnell’s October 2, 2009 Order nor the  
26 Attorney-Client Privilege apply.

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28 <sup>2</sup> “. . . to the extent that plaintiff provided any or all of the documents to his attorney, such  
information is entitled to the attorney-client privilege. The fact of transmission triggers the  
privilege.”

1        Moreover, the Interrogatories are not compound. The Interrogatories do not  
2 ask the Plaintiffs to identify each "RETURNED/DESTROYED DOCUMENT"  
3 and then identify the "SOURCE" from which they obtained that specific  
4 "RETURNED/DESTROYED DOCUMENT." Instead, the Interrogatories ask for  
5 a general list of all "SOURCE[s]" from which the Plaintiffs and/or their counsel  
6 obtained any "RETURNED/DESTROYED DOCUMENT." Finally, the Plaintiffs  
7 do not need the Defendants to provide them with a list of  
8 "RETURNED/DESTROYED DOCUMENT[s]" in order to answer the  
9 Interrogatories. Accordingly, the Defendants' instant Motion to Compel is  
10 **GRANTED.** See Cal. Code Civ. P. § 2017.010; *Gonzalez*, 33 Cal. App. 4th at  
11 1546; *Davies*, 36 Cal. 3d. at 301; *Lipton*, 48 Cal. App. 4th at 1611-12.

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13                **2.     The Defendants' Motion For Protective Order Prohibiting**  
14                **Dissemination Of The Videotaped Records Of Depositions:**  
15                **DENY**

16        Detective Mike Parrinello was deposed by videotape and written  
17 transcription on June 3 and 7, 2010. On July 8, 2010, the Defendants discovered a  
18 video juxtaposing excerpts of Parinello's deposition testimony about an encounter  
19 with Plaintiff Rodriguez with excerpts of a tape recording allegedly made about the  
20 same encounter. The Defendants allege that the Plaintiffs were responsible for  
21 posting the video online and did so to intimidate witnesses. Now, seven months  
22 after discovering the video, the Defendants move for a protective order to prevent  
23 dissemination of all current and future videotaped depositions in this matter.

24        "The court, for good cause shown, may make any order that justice requires  
25 to protect any party, deponent, or other natural person or organization from  
26 unwarranted annoyance, embarrassment, or oppression, or undue burden and  
27 expense." Cal. Code Civ. P. § 2025.420(b). However, "[t]he substantive aspects  
28 of the law guaranteeing public access to court records are fairly well established."  
*Wilson v. Science Applications International. Corp.*, 52 Cal.App.4th 1025, 1030

1 (1997). Thus, “[t]o prevent secrecy in public affairs public policy makes public  
2 records and documents available for public inspection by newsmen and members  
3 of the general public alike.” *Id.* Further, “[i]f public court business is conducted in  
4 private, it becomes impossible to expose corruption, incompetence, inefficiency,  
5 prejudice, and favoritism . . . or this reason traditional Anglo-American  
6 jurisprudence distrusts secrecy in judicial proceedings and favors a policy of  
7 maximum public access to proceedings and records of judicial tribunals.” *Id.*

8 In the instant case, the Defendants have not illustrated the good cause  
9 necessary for the imposition of a protective order. First, the Motion is based on a  
10 single instance of dissemination of a videotaped deposition. Further, the Motion is  
11 made seven months after the discovery of the single instance of dissemination.  
12 Moreover, there is no evidence that the single instance of dissemination  
13 “annoy[ed], embarrass[ed], oppress[ed], or [caused an] undue burden [or]  
14 expense.” Cal. Code Civ. P. § 2025.420(b). Finally, there is no evidence that  
15 witnesses have been intimidated by the single instance of dissemination.  
16 Accordingly, because the public policy favoring maximum public access to court  
17 proceedings is strong and good cause does not exist, the Defendants’ instant  
18 Motion to Compel is **DENIED**. See Cal. Code Civ. P. § 2025.420(b); *Wilson*, 52  
19 Cal.App.4th at 1030.

### 20 3. The Defendants’ Motion For Sanctions: **DENY**

21 “[T]he court shall impose a monetary sanction under Chapter 7  
22 (commencing with Section 2023.010) against any party, person, or attorney who  
23 unsuccessfully makes or opposes a motion to compel further response to a demand,  
24 unless it finds that the one subject to the sanction acted with substantial  
25 justification or that other circumstances make the imposition of the sanction  
26 unjust.” Cal. Code Civ. P. § 2031.310(h). In awarding sanctions, “[a] court must  
27 balance the necessity of penalizing frivolous conduct against the danger of chilling  
28 the diligent pursuit of lawsuits by an attorney for his or her client . . . [n]onetheless,  
where a trial court concludes a party's motion has been brought in bad faith and is

1 frivolous, and sufficient evidence supports that conclusion, the imposition of  
2 sanctions will be upheld on appeal.” *Monex International, Ltd. v. Peinado*, 224  
3 Cal.App.3d 1619, 1624-25 (1990) (citation omitted).

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5 In the instant case, the Defendants have attached a request for sanctions to  
6 each of the Motions that it submitted. These requests must be denied because the  
7 Plaintiffs acted with “substantial justification.” Further, there is no evidence that  
8 the Plaintiffs acted frivolously or in bad faith. Thus, the imposition of sanctions  
9 would result in the “chilling [of] the diligent pursuit of [the] lawsuit[ ].” *Monex*  
10 *International, Ltd.*, 224 Cal.App.3d at 1624-25. Accordingly, the Defendants’  
11 requests for sanctions are **DENIED**. See Cal. Code Civ. P. § 2031.310(h); *Monex*  
12 *International, Ltd.*, 224 Cal.App.3d at 1624-25.

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15 **IT IS SO RECOMMENDED.**

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18 Date: March 16, 2011



Hon. Diane Wayne (Ret.)  
Discovery Referee

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**ORDER**

The foregoing Report and Recommendation #7 is adopted as an Order of the court, with the following modifications:

Date: March \_\_\_\_, 2011

\_\_\_\_\_  
Hon. Joanne B. O'Donnell,  
Judge of the Superior Court



**PROOF OF SERVICE BY EMAIL & U.S. MAIL**

Re: Rodriguez, Omar, et al. vs. Burbank Police Department, et al.  
Reference No. 1220040470

I, Christina Dobszewicz, not a party to the within action, hereby declare that on March 17, 2011 I served the attached 7TH REPORT & RECOMMENDATION OF THE DISCOVERY REFEREE on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Los Angeles, CALIFORNIA, addressed as follows:

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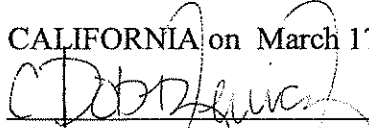
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I declare under penalty of perjury the foregoing to be true and correct. Executed at Los Angeles,

CALIFORNIA on March 17, 2011.

  
Christina Dobszewicz  
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